

**STAFF REPORT FOR
DIMENSIONAL VARIANCE FOR
ASPEN AIR, LLC
ZONING BOARD OF ADJUSTMENT**

**Thursday, March 28, 2019 9:00 a.m.
Room 105 Courthouse Annex
Cascade County Commissioners Chambers**

Subject Property Information

Name & Address of Applicant	Ken Weinheimer – Aspen Air, LLC 4601 River Dr N Great Falls, MT 59405
Name & Address of Owner	Ken Weinheimer – Aspen Air, LLC 4601 River Dr N Great Falls, MT 59405
Geo Code:	02-3016-04-1-02-28-0000
Parcel Number:	0002615225
Existing Zoning:	Heavy Industrial (I2) District
Legal Description:	Henke Tracts, Block 1, Lot 01A, Section 04, Township 20 N, Range 04 E
Requested Action and Purpose:	Dimensional Variance request to reduce rear yard setback
Total Land Area:	1.047 Acres
Adjacent Land Uses & Zoning:	City of Great Falls and Cascade County Heavy Industrial (I2) Industrial and Commercial Uses
Current Land Use:	Undeveloped
Applicable Regulations:	Sections 7.4.1.3 (3) and 9.5 of the Cascade County Zoning Regulations (CCZR)

Special Information

1. Section 7.4.1.3 (3)(a) of the CCZR provides the following required setbacks for rear yards in Industrial Districts:
 - (3) *Rear Yard*
 - (a) *There shall be a rear yard on every lot not less than twenty-five (25) feet in depth except where a railroad line or spur is located or where the rear lot line abuts a dedicated right of way not less than twenty-five (25) feet in width. In the event the right of way is less than twenty-five (25) feet in width, the rear setback on the lot*

shall be the amount required to provide a total of at least twenty-five (25) feet.

2. Section 7.3.3 (3) of the CCZR provides the following required setbacks for rear yards in Commercial Districts:

(3) Rear Yard

(a) Ten (10) feet except that required to provide parking as specified in Section 8.3. When a lot in a Commercial District abuts upon a lot in a Residential district, the standards shall be followed as set forth in Section 8.3.)

3. The following definition is taken from the CCZR:

VARIANCE

A variance is a relaxation of the terms of these regulations where such variance will not be contrary to the public interest and where, owing to conditions peculiar to the property and not the result of the actions of the applicant, a literal enforcement of the regulations would result in unnecessary and undue hardship. As used in these regulations, a variance is authorized only for height, area, and size of structure, size of yards and open spaces, signage, landscaping, or as otherwise specifically provided for in these regulations. Establishment or expansion of a use otherwise prohibited shall not be allowed by variance, nor shall a variance be granted because of the presence of non-conformities in the zoning district or adjoining zoning districts.

4. Section 9.5.4 of the CCZR requires the concurring vote of three members of the Zoning Board of Adjustment to approve a variance request.
5. Public Notice of this Dimensional Variance Request was published in the Great Falls Tribune on March 3 and March 10, 2019 and mailed to adjacent property owners on March 7, 2019.

Analysis

The applicant is requesting a variance to allow a rear yard setback of 10 feet. Section 9.5.2 of the Zoning Regulations states, "A dimensional variance shall only be granted when the evidence shows and a finding can be made that each of the following conditions exists:

(1) The variance is not contrary to the public interest.

The Applicant responded: *The subject variance request, if granted, will not be contrary to public interest as the impacts will be relatively minimal in nature. The proposed change in setback effectively meets the requirements of commercially zoned districts which generally matches the intended use of the subject parcel as well as the existing use of the adjacent parcel (both parcels are owned by the Applicant). Additionally, due to the configuration of the subject and neighboring lot, the setback falls between two lots of matching land use. As the proposed land use at the subject property is not considered industrial in nature, the reduced setback will not impact public interest.*

Staff agrees with the applicant's assessment that this variance would not be contrary to the public interest. Storage units are typically a light commercial use that generate traffic levels

below what a standard commercial or industrial operation would generate. The intent of the 25 foot rear yard setback is for site access and allowing for a reasonable area for loading and unloading that does not generate hazards with a business's normal traffic. Cascade County does not mandate distances between structures or minimum widths for through traffic on this type of a development, and leaves this to the discretion of property owner how much space they think will be necessary to suit their needs. Additionally, staff does not find it unreasonable to apply the Commercial rear yard setback of 10 feet, as requested by the applicant, to a use that would be allowable as a permitted principal use in the Commercial district.

(2) A literal enforcement would result in an unnecessary hardship, owing to conditions unique to the property.

***The Applicant Responded:** The perceived hardship results from the abnormal shape of the lot, coupled with the limited lot depth and the granting of the 3 separate public utility easements along the south side of the lot (front yard). Together, the easements and 25' rear yard setback would effectively eliminate 85' of buildable area from a lot with an average depth of 175' which hinders the development potential of the lot. The granting of the easement will allow for better utilization of the lot for the proposed use.*

Additionally, due to the location of the neighboring properties drainfield, and existing 25' buffer currently existing between the storage unit fencing and property line, which is approximately 10' beyond the requirement. This extra setback will effectively offset the proposed variance.

With regards to this property, Staff considered the location of existing wastewater facilities, as well as the significant amount of acreage consumed by utility easements on the south side of the property. Standard Commercial and Industrial district front yard setbacks are 15 feet, however this property has three separate public utility and gas company easements that utilize a total of 40 feet in depth before a buildable location is reached. These easements preclude development of the subject property well in excess of what would be minimally required by the Cascade County Zoning Regulations. Additionally, as the applicant stated, the distance between the lot line and the development on the adjacent northern lot is close to, or in excess of what would normally be required, and is otherwise utilized by a septic drainfield creating an open space buffer. For these reasons, staff has found that a literal enforcement would result in an unnecessary hardship, and that this proposal meets this criteria.

(3) The spirit of this Section would be observed and substantial justice done by granting the variance.

***The Applicant Responded:** As noted above, the proposed rear setback distance of 10 feet matches the existing zoning regulations for commercially-zone lots. As the proposed property use will be considered commercial in nature rather than industrial, the spirit of the zoning regulations section will be observed with the granting of this request.*

Staff agrees with the applicant's assessment and has found that allowing the applicant to have a reduced rear yard setback is in line with the spirit of the regulations and substantial justice would be done by granting this request.

Motions:

The following motions are provided for the Board's consideration:

1. the variance to allow for a reduced rear yard setback to ten (10) feet for a storage facility on the parcel described as Block 1, Lot 1A of Henke Tracts Minor Subdivision, be **denied**,
or
2. the variance to allow for a reduced rear yard setback to ten (10) feet for a storage facility on the parcel described as Block 1, Lot 1A of Henke Tracts Minor Subdivision, be **approved**.

Attachments: Variance Application
 Site Map
 Vicinity Map